U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

April 5, 1999

Eric Proshansky, Esq.
Assistant Corporation Counsel
City of New York
Law Department
100 Church Street
New York, NY 10007

Dear Mr. Proshansky:

This refers to Chapter 149 of the Laws of 1998, State of New York, which changes procedures related to elections for the community school boards (CSBs) of the counties of New York, Bronx, and Kings in the City of New York, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On November 16, 1998, we requested additional information on Section 5 of Chapter 149, which repealed and replaced Education Law § 2590-c(7), replacing the single transferable vote method of election (STV) with a form of limited voting whereby voters may cast one vote for each of up to four candidates (LV4), and the nine candidates receiving the greatest number of votes shall be elected. Section 5 of Chapter 149 also provided for tie-breaking procedures, for the use of voting machines for the proposed LV4 elections, and for the authority of the Board of Elections to promulgate regulations for the administration of the LV4 system.

On February 1, 1999, we received a letter from the City of New York indicating that it had completed its response to our request for additional information. On February 4, 1999, we interposed an objection to Section 5 of Chapter 149. On February 26, 1999, we received the City's request for reconsideration and withdrawal of the objection. Meanwhile, on March 12, 1999, we received the city's submission of Chapter 12 of the Laws of the State of New York (1999), which changed the date of the upcoming CSB elections to May 18, 1999; opened an additional time period for filing candidate nominating petitions for those elections; and provided that STV would be used in all five boroughs of the city for the 1999 CSB elections if the Department did not withdraw its objection to Section 5 of Chapter 149 by April 5, 1999. On March 22, 1999, we precleared Chapter 12.

With regard to the City's pending request for

reconsideration, we have carefully considered all the information you provided, including the letter of February 26, 1999, and its attachments, as well as Census data and information from our files and from other interested parties. We have reviewed our previous analysis of the submitted LV4 system, in which each voter would have four equally weighted votes, and have further examined the design and operation of the existing STV system. We write today in response to the City's request for a determination on the request for reconsideration by today's date, and base this decision on the information available to us at this time.

We note at the outset that the fact that we received computerized election data for only six of the twenty-four covered CSB districts, and only for the 1996 election, made it difficult to draw reliable conclusions about the impact of the proposed change. We could better assess the impact of the new system if we had data from at least two elections. In addition, it is difficult to make reliable assumptions about the extent to which voter and candidate behavior under one system would be the same under another system, further complicating any analysis of the impact of LV4.

The city's request for reconsideration states that "new research data . . . show[] that: (i) large numbers of voters in school board elections, and especially minority voters, in practice already use a form of limited voting, and (ii) the degree of bloc voting in school board elections is quantitatively insufficient to reduce minority voting strength below that obtained under the [STV] method that the City seeks to replace." Reconsideration letter at 1.

Our investigation on reconsideration specifically focused on each of these contentions and on the information the city submitted to support them. With regard to the degree of bloc voting, our analysis on reconsideration provided further confirmation that voting in CSB elections in the covered counties is significantly polarized by race; that is, that voters of different racial or ethnic groups in the covered CSBs tend markedly to prefer different candidates for CSB office. We examined levels of support for candidates by race in election districts in each of the covered counties. We also re-examined CSB election returns previously provided to us by the city, and gave careful study to the city's analysis of those returns in connection with its reconsideration request. We determined that racial bloc voting is significant in CSB elections.

In addition, we examined the extent to which voters in school board elections did not fill out their entire ballots, and evaluated the effect of this truncation on election results. We determined that the limited extent of ballot truncation among voters in CSB elections generally, and of "bullet voting" among minority voters in particular, does not preclude a finding that

LV4 will accord those voters less opportunity to elect representatives of their choice in CSB elections than does STV.

Our objection letter of February 4, 1999, indicated that the threshold of exclusion, that is, the share of voter support needed to elect one candidate, rose approximately threefold in a change from STV to the proposed LV4 system. However, it should be noted that we did not consider the threshold of exclusion under either STV or LV4 to be a rigid bar to the election of minority-choice candidates. We searched carefully in each of the covered counties, including a review of the city's LV4 simulation evidence, for evidence that the operation of the submitted LV4 system would tend, as a practical matter, to negate or offset this apparent retrogressive effect. We concluded that the city's presentation failed to demonstrate that the actual operation of LV4 would have no adverse effect on the opportunity of minority voters to elect representatives of their choice to CSBs in the covered counties. However, our analysis does indicate that other non-STV systems could provide minority voters an opportunity to elect candidates of choice comparable to the opportunity they now have under STV.

In light of these considerations, I remain unable to conclude that the city has carried its burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline at this time to withdraw the objection to the change in the method of election from single transferable vote to limited voting with four votes per voter.

As previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change in method of election neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

With regard to the remaining changes specified in Section 5 of Chapter 149, the Attorney General will make no determination at this time, as those changes are directly related to the objected-to change in the method of election. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of New York plans to take concerning this matter. If you have any questions, please feel free to call Stephen B. Pershing, an attorney in the

Voting Section, at (202) 305-1238.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division